IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA 1928

Crl.MC.No. 4051 of 2006()

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PETITIONER: DEFACTO-COMPLAINANT:

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RAJU, S/O.RAJAPPAN,
RAJASREE, BALARAMAPURAM, 9/220 A (12/1098),
KOTTUKAL VILLAGE, ATHIYOOR DESOM.

BY ADV. SRI.M.RAJAGOPALAN NAIR

RESPONDENT: COMPLAINANT:

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STATE OF KERALA,
REPRESENTED PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.4051 of 2006**

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Dated this the 4th day of January, 2007

**ORDER**

The petitioner is aggrieved by the order passed by the learned Magistrate under Section 451 Cr.P.C rejecting his prayer for release of a vehicle-Car bearing Reg.No.KRR-25. The registered owner of the car on the date of the complaint is the accused. The impugned order has been passed without giving notice to the said accused/registered owner on the date of the complaint/seizure of the vehicle. The said registered owner/accused has not been arrayed as a party in this petition also. Both petitioner as well as the State took the stand before the learned Magistrate that the vehicle can be released to the possession of the petitioner. But the learned Magistrate in the circumstances of the case, rightly according to me, felt that there are suspicious circumstances and the release of the vehicle cannot be directed even when the prosecution/police do not raise any objections. In fact, in the course of submissions before me, the learned counsel for the petitioner submits that the accused was the registered owner on the relevant date of alleged seizure and the accused had effected transfer in favour of the petitioner after the commencement of the investigation.

2. In these circumstances, I am satisfied that disposal of the claim of the petitioner cannot be made without and before arraying the accused as a party to this petition. If on the date of the alleged theft there was another registered owner, he also undoubtedly has to be given notice.

3. With the above observations, this Crl.M.C is, allowed in part. The impugned order is set aside. The learned Magistrate is directed to dispose of the application afresh after giving notice to all concerned, including the accused. The petitioner shall appear before the learned Magistrate on 15.01.2007 to continue the proceedings.

4. Hand over a copy of this order to the learned counsel for the petitioner.

**(R.BASANT, JUDGE)**

rtr/-